

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

ADRIAN DIAZ,)
)
Petitioner,)
)
vs.) CIV-13-229-M
)
ANITA TRAMMELL, Warden,)
)
Respondent.)

REPORT AND RECOMMENDATION

With his Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2254 and/or §2241, Petitioner has filed an Affidavit construed as a motion for leave to proceed *in forma pauperis* and supporting documents. Having reviewed said affidavit, the undersigned finds that Petitioner has sufficient financial resources to pay the \$5.00 filing fee. Because he does not qualify for authorization to proceed without prepayment of the filing fee, Petitioner's affidavit should be denied, and he should be required to pay the full filing fee for this action to proceed.

RECOMMENDATION

Based on the foregoing findings, it is recommended that the motion for leave to proceed *in forma pauperis* (Doc. #2) be DENIED and the action be dismissed without

prejudice unless Petitioner pays the full filing fee to the Clerk of the Court by April 1st, 2013. Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by April 1st, 2013, in accordance with 28 U.S.C. §636 and LCvR 72.1. The failure to timely object to this Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996) (“Issues raised for the first time in objections to the magistrate judge’s recommendation are deemed waived.”).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 12th day of March, 2013.



GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE